

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____)
UNITED STATES OF AMERICA)
VS.) CRIMINAL ACTION NO.
) 4:20-MJ-1511
)
ZHENG DONG CHENG) 4:55 P.M.
_____)

PRELIMINARY EXAMINATION AND DETENTION HEARING
BEFORE THE HONORABLE ANDREW M. EDISON
AUGUST 26, 2020

APPEARANCES: (All parties appeared via video conference.)

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PRELIMINARY EXAMINATION AND DETENTION HEARING

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PROCEEDINGS

(The following proceeding was held via video conference.)

* * *

THE COURT: Okay. We are on the record now in case 4:20-MJ-1511, United States versus Zhengdong Cheng.

Could I have introductions of counsel, please, starting with the government?

MR. MCINTYRE: Mark McIntyre and Carolyn Ferko for the United States, Your Honor.

THE COURT: Hello.

And for the defendant?

MR. GALLAGHER: Philip Gallagher for Dr. Cheng.

THE COURT: And, Dr. Cheng, I see you there on the video. We have the interpreter, who should be translating everything to English simultaneously. As soon as I say something, you should be able to hear the translation, and, likewise, any time you say something, the translator will then interpret it to me.

So if you have any problem or any questions during this hearing, please just let the interpreter know, and she will make sure to stop. If you have -- if there is any problem with communicating, raise your hand, and I will make sure that -- that we stop the proceedings, okay, sir?

THE DEFENDANT: I can't hear the English right now.

1 Is it possible that I can hear the English, or should I be
2 hearing the English?

1 6 : 5 6 : 4 4 3 **THE COURT:** I'm not sure I understand.

1 6 : 5 6 : 4 7 4 **MR. GALLAGHER:** May I jump in, Your Honor?

1 6 : 5 6 : 4 8 5 **THE COURT:** Please.

1 6 : 5 6 : 5 0 6 **MR. GALLAGHER:** Generally, it's easier, with
7 translation, if he just hears from the translator so it's not
8 confusing hearing different speech at the same time. So as long
9 as the translator's interpreting everything said by everybody,
10 that's all he needs to hear.

1 6 : 5 7 : 1 6 11 **THE DEFENDANT:** Okay. That's good.

1 6 : 5 7 : 1 9 12 **THE COURT:** Okay. Before we go any further -- well, I
13 think we're here today for a probable cause and a detention
14 hearing. Am I correct on that, Counsel?

1 6 : 5 7 : 2 8 15 **MR. GALLAGHER:** Yes, Your Honor.

1 6 : 5 7 : 2 9 16 **MR. MCINTYRE:** Yes, Your Honor.

1 6 : 5 7 : 2 9 17 **THE COURT:** Okay. Before we go any further, I just
18 want to make sure I have the consent, the agreement of all
19 parties to proceed on the video format. Obviously, we would all
20 like to be in the courthouse together proceeding, but given the
21 COVID-19 pandemic, which has wreaked havoc on society, we're
22 trying to be safe and, therefore -- or trying to conduct these
23 proceedings on video.

1 6 : 5 7 : 4 9 24 So I'm going to ask both the government and the
25 defendant: Are you agreeable to waive any right you would have

1 to participate in today's proceedings and only today's
2 proceedings in the courtroom and, instead, proceed on video?

16:57:59 3 Mr. Gallagher, for the defendant?

16:58:01 4 **MR. GALLAGHER:** Yes, we consent to that.

16:58:03 5 **THE COURT:** From the government?

16:58:05 6 **MR. MCINTYRE:** Yes, Your Honor.

16:58:06 7 **THE COURT:** Okay. Are we ready to proceed with the
8 probable cause and detention hearing?

16:58:12 9 **MR. GALLAGHER:** Yes, Your Honor.

16:58:13 10 **MR. MCINTYRE:** The government is ready, Your Honor. I
11 just wanted to make sure you could hear me okay. I'm having --
12 I can hear you, but it's kind of low. But I wanted to make sure
13 you could hear me.

16:58:21 14 **THE COURT:** I can hear you loud and clear.

16:58:24 15 **MR. MCINTYRE:** Okay.

16:58:24 16 **THE COURT:** By the way, if anyone -- during the course
17 of this, if anyone has any problem hearing, just raise your
18 hand. I'm watching it, and I want to make sure, obviously, that
19 there's full communication. We had a detention hearing
20 yesterday out at Joe Corley that halfway through, we lost the
21 defendant. So I will make sure I -- I see all the boxes, and
22 we'll make sure everyone's on.

16:58:47 23 Okay. Well, let's have the government proceed,
24 please.

16:58:51 25 **MR. MCINTYRE:** Yes, Your Honor. The government would

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call FBI Special Agent Daniel Snow.

THE COURT: Agent Snow, would you raise your right hand, sir.

(Witness sworn.)

THE COURT: Okay. Please proceed.

DANIEL SNOW, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. MCINTYRE:

Q Could you state your name for the record, please?

A Yes. Daniel Snow.

Q And, Mr. Snow, where are you employed?

A I'm employed with the Federal Bureau of Investigation.

Q And what is your job title?

A I am a special agent.

Q And how long have you been an FBI special agent?

A Just short of 17 years.

Q And prior to becoming a special agent for the FBI, did you have any other law enforcement experience?

A I did. I spent nine and a half years with the Houston Police Department.

Q Okay. And have you familiarized yourself with the facts in the complaint that charge the defendant with fraud and false statements regarding a NASA grant?

A I have.

Q And before we get started on that, can you tell me a little

Mr. McIntyre Direct of Daniel Snow

1 bit about Mr. Cheng? Where was he or where is he employed?

17:00:10 2 **A** He was employed as a full possessor at Texas A&M University
3 since 2004.

17:00:17 4 **Q** And was he working in a particular department at Texas A&M?

17:00:21 5 **A** Yeah. He was a professor in the chemical engineering
6 department.

17:00:27 7 **Q** And do you know where Mr. Cheng was -- the defendant was
8 born?

17:00:34 9 **A** I know he was born in China. I believe Houdan, China.

17:00:39 10 **Q** And during the time period -- well, can you tell the Court
11 what the time period for the NASA grant was, when it was awarded
12 and -- and how long it was in effect?

17:00:52 13 **A** Yeah. The NASA grant was awarded on September 13th of 20-
14 -- September, yeah, 13th of 2013, and it went through
15 August 31st of 2020, this year.

17:01:07 16 Originally, it was 2018. It was extended to this year.

17:01:12 17 **Q** Now, during the time period of this grant and also during
18 the time period that the defendant was employed at Texas A&M
19 University, did he have other employment?

17:01:25 20 **A** Yes, he did.

17:01:26 21 **Q** And specifically, did he have other employment in China?

17:01:31 22 **A** Yes, he did.

17:01:32 23 **Q** And is one of the places that he was employed Guangdong
24 University?

17:01:41 25 **A** Yes.

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Q And can you tell me what positions he held at Guangdong University and for what time period?

A Yeah. From at least 2012, possibly 2011, Dr. Cheng was the director of Soft Matter Institute at Guangdong University of Technology. He was also employed, from September 2012 to August of 2014, as a province chair professor.

And, further, he was employed as a special hire Hundred Talent professor from September of 2011 to the present.

Q Guangdong University of Technology, who -- what entity established that university?

A Guangdong University of Technology was established by the People's Republic of China Ministry of Education in approximately 1995.

Q And who runs and manages Guangdong University of Technology?

A The People's Republic of China's Ministry of Education.

THE COURT: Before we go any further, I just want to make sure: We do have the court reporter on, don't we?

THE REPORTER: Yes, Your Honor. I'm here.

THE COURT: Okay. You can hear everything?

THE REPORTER: Yes, Your Honor. Yes, Your Honor.

THE COURT: Okay. Perfect.

Mr. McIntyre, please proceed.

MR. MCINTYRE: Okay. I can speak louder, too, if there's a problem.

THE COURT: No, you're good. I just wanted to make

Mr. McIntyre Direct of Daniel Snow

1 sure we had the court reporter on. I can't see the court
2 reporter on the video. So...

17:03:09 3 **BY MR. MCINTYRE:**

17:03:10 4 **Q** So in addition to this employment that you described at
5 Guangdong University of Technology, did the defendant, during
6 the time of the NASA grant and his employment at Texas A&M
7 University, participate in Chinese talent programs?

17:03:26 8 **A** Yes, he did. One of his positions at Guangdong University
9 was a special hire as a Hundred Talents Program professor.

17:03:34 10 **Q** Can you tell the Court what -- or give a description of
11 these Chinese talent programs?

17:03:39 12 **A** Yeah. Talent programs were established by the Chinese
13 government to recruit individuals with access or knowledge to
14 foreign technology or intellectual property. The talent
15 programs allowed the Chinese government to create significant
16 financial incentives to foreign individuals that were talented
17 in the areas of technology and international -- intellectual
18 property, and they were able to transfer that technology to
19 China.

17:04:09 20 **Q** Now, you stated he was a participant in the Hundred Talent
21 Program; is that correct?

17:04:16 22 **A** That is correct.

17:04:18 23 **Q** And was he a participant in any other Chinese talent
24 programs?

17:04:23 25 **A** There was a River Talent Program that he was associated with

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at Southern University of Technology.

Q And where is Southern University of Technology located?

A It is in China.

Q And did he apply for any other Chinese talent programs?

A He did apply to the Thousand Talents Program, which is a higher program, at the University of Science and Technology of China.

Q And do you know approximately the time period that he applied to the Thousand Talents Program?

A I believe it was in 2014.

Q Now, in addition to the participation in the Chinese talent programs, the employment at Guangdong University of Technology, did the defendant, during the time of the grant and his employment at Texas A&M, form or have (indiscernible) --

THE REPORTER: I'm sorry. It cut out. What was the -- what was the end of the question?

"His employment at Texas A&M" --

MR. MCINTYRE: What?

THE REPORTER: There was phone --

THE COURT: Could you ask that question again, Mr. McIntyre? The court reporter didn't understand it.

MR. MCINTYRE: Well, sometimes that's hard to do. Let me see. Was I -- was it about the Thousand Talents Program? Is that the question?

THE REPORTER: The question --

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1 7:05:50 1 A I believe you were asking about the formation of a
2 corporation.

1 7:05:55 3 BY MR. MCINTYRE:

1 7:05:55 4 Q Okay. Well, I'll go back.

1 7:05:57 5 Did -- did he apply -- the defendant apply, at any time,
6 for a Thousand Talents Program in China?

1 7:06:04 7 A Yes, he did, to the University of Science and Technology of
8 China.

1 7:06:08 9 Q Okay. And during the time period that he was employed at
10 Texas A&M and during the time period that he was working on the
11 NASA grant, in addition to employment at Guangdong University of
12 Technology, the participation in the Chinese talent programs,
13 did he form any Chinese companies during that same time period?

1 7:06:29 14 A Yes. Dr. Cheng, along with others, formed the Foshan City
15 Ge Wei Technology Company, Ltd.

1 7:06:38 16 Q And what year was that company formed?

1 7:06:42 17 A In 2014.

1 7:06:45 18 Q And where was Foshan City Ge Wei Technology Company located?

1 7:06:51 19 A In China.

1 7:06:53 20 Q And what was the purpose or business interest of Foshan City
21 Ge Wei Technology Company to your understanding?

1 7:07:01 22 A It was an enterprise -- it was an enterprise affiliated with
23 Guangdong University of Technology. It was dedicated to the
24 design, fabrication and application of microfluidic chips, which
25 have application in energy, biotechnology, the food industry,

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lots of applications.

Q And to the best of your knowledge, is he still an owner in that company?

A Yes. As of January 19th, we know he was still an owner.

Q Now, during this same time period that we're discussing when he was employed at Texas A&M, and also during the time period of the grant, did he work at any other Chinese universities besides Guangdong University of Technology?

A Yes. Between December of 2017 and August of 2018, he worked for the Southern University of Science and Technology in China.

Q And what was his position at Southern University of Science and Technology?

A He -- he was a professor there.

Q And was he compensated for being a professor during that -- at Southern University of Science and Technology?

A Yes, he was. His -- he received approximately 50,000 renminbi, which in U.S. dollars is about \$7,200.

Q And was that per month or for the time period of the contract or for what time period?

A That was for three months.

Q Okay. And what was the time period that he was a visiting professor at Southern University of Science and Technology?

A Yeah. From December of 2017 through August of 2018.

Q Now, in relation to the NASA grant, did Mr. -- did the defendant participate with Texas A&M in a NASA research grant?

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17:09:15 1 A Yes, he did.

17:09:17 2 Q And what time period did he start the application process
3 for a NASA grant?

17:09:23 4 A The application was in 2013.

17:09:27 5 Q And what was the defendant's role in the research team that
6 was seeking to obtain the NASA grant?

17:09:37 7 A He was the principal investigator, which meant he would have
8 been the lead researcher.

17:09:43 9 Q And the grant that the defendant applied for, what was the
10 title of that grant, if you know?

17:09:50 11 A The title was "Research Opportunities in Complex Fluids and
12 Macromolecular Biophysics, Liquid Crystals of Nanoplates."

17:10:03 13 Q And you had previously stated that the period of performance
14 for that grant was from 2013 to 2020; is that correct?

17:10:11 15 A Yeah. To be more specific, from September 1st of 2013 till,
16 originally, August 31st of 2018. The grant was then extended to
17 August 31st of this year, 2020.

17:10:25 18 Q And what was the monetary amount associated with the grant?

17:10:30 19 A The -- the grant total was approximately \$747,000.

17:10:37 20 Q And what time period -- what month and what year was the
21 grant submitted to NASA, the grant being --

17:10:43 22 A The application -- yeah. The submission was in April of
23 2013.

17:10:49 24 Q Now, were there restrictions on obtaining the NASA grant
25 that related to China?

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17:10:56 1 **A** Yes. The -- 14 CFR 1260 places NASA on funding restrictions
2 from anybody working -- funding anything working with China, in
3 collaboration, coordination with any Chinese company or -- or
4 any way with China.

17:11:19 5 **Q** Okay. And this prohibition of participating, collaborating
6 or coordinating with any Chinese entity included Chinese
7 universities; is that correct?

17:11:30 8 **A** It did. Chinese universities are considered incorporated
9 under the laws of China.

17:11:37 10 **Q** And so the grant proposal was submitted in April of 2013; is
11 that correct?

17:11:42 12 **A** That is correct.

17:11:45 13 **Q** And was that proposal that was sent to NASA approved by the
14 defendant?

17:11:52 15 **A** It was.

17:11:54 16 **MR. GALLAGHER:** Sorry. Mr. McIntyre, I don't mean to
17 interrupt. The judge is not appearing. I just want to make
18 sure we still have him.

17:12:02 19 **MR. MCINTYRE:** Okay.

17:12:02 20 **THE COURT:** I'm here. I don't know why I can't see
21 anyone. Okay. Can you see me now?

17:12:06 22 **MR. GALLAGHER:** Yes. Sorry.

17:12:08 23 **THE COURT:** No, no. Thank you. I can hear everything
24 that was going on. For some reason, I just lost the picture.
25 So proceed.

Mr. McIntyre Direct of Daniel Snow

MR. MCINTYRE: Okay. Yes. Keep going where I was?

BY MR. MCINTYRE:

Q So you had previously stated that the defendant approved the proposal to get the NASA grant; is that correct?

A That is correct.

Q And do you know the approximate time period that he approved the grant before it was submitted?

A It was approximately six days before Texas A&M submitted the grant.

Q And what did the grant proposal say about international collaboration and, specifically, collaboration or coordination with China?

A Yeah. It (indiscernible) --

THE REPORTER: I'm sorry. Could you please repeat?

MR. MCINTYRE: I'm sorry?

THE REPORTER: There was interference --

THE COURT: Let's repeat the question.

THE REPORTER: Yeah. I have the question, just the answer, please.

THE WITNESS: I don't remember the question.

THE REPORTER: Okay.

THE COURT: Repeat the question, please.

BY MR. MCINTYRE:

Q The question was: What did the proposal -- what did it say about international collaboration or coordination specifically

Mr. McIntyre Direct of Daniel Snow

1 as it relates to China?

17:13:25 2 **A** Yeah. The -- the proposal clearly said no international
3 collaboration or partnerships were allowed.

17:13:34 4 **Q** And as part of -- as part of that grant proposal, was the
5 defendant -- as a principal investigator, did he include a
6 résumé in that proposal application?

17:13:47 7 **A** He did. He includes his résumé that did not include any
8 employment or affiliation with Chinese companies or
9 universities.

17:13:59 10 **Q** Now, let me take you to August of 2013. Was there e-mail
11 communications between NASA and the Texas A&M proposal
12 administrator regarding the grant?

17:14:17 13 **A** Yes. That communication occurred with the NASA procurement
14 official and the Texas A&M proposal administrator.

17:14:25 15 **Q** Okay. And can you tell me the substance of those e-mail
16 communications between NASA and the Texas A&M proposal
17 administrator?

17:14:35 18 **A** Yeah. The NASA procurement official had, in the e-mail,
19 sent a form that was titled "Assurance of Compliance - China
20 Funding Restrictions." That form had to be completed before the
21 NASA grant officer would sign -- sign the grant.

17:14:58 22 **Q** And this form laid out the NASA/China funding restrictions
23 that we've previously discussed; is that correct?

17:15:04 24 **A** That's right. It tracked the language of 14 CFR 1260.

17:15:09 25 **Q** Okay. And then was there a follow-up e-mail on August 29th

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of 2013 between the defendant, the Texas A&M proposal administrator and NASA regarding this assurance of compliance on China funding restrictions?

A Yeah. On August 29th, the A&M proposal administrator replied to NASA and copied Dr. Cheng and -- with the signed forms, and it was signed by the Texas A&M director of contracts and grants.

Q And during that e-mail chain, was there a response from the defendant regarding --

A Yeah.

Q -- Chinese restrictions?

A Yeah. Dr. Cheng e-mailed directly the NASA procurement official. He inquired about -- that he would be hiring graduate students for the research and wanted -- and thought it was possible that they could be Chinese students, and he wanted to be clear if that was allowed.

Q So he was making what he called a disclosure; is that correct, sir?

A Yes.

Q Okay. And so let me take you to September 19th of 2013.

Did NASA award the research grant to the team -- research team at A&M headed by the defendant?

A Yeah, they did. On September 19th of 2013, they awarded the grant, and the grant did include the 14 CFR 1260 restrictions.

Q The China funding restrictions; is that correct?

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17:16:50 1 **A** That is correct.

17:16:52 2 **Q** And let me take you to just a few days after that, on
3 September 30th of 2013. Did Texas A&M have an annual financial
4 disclosure requirement for its employees?

17:17:07 5 **A** They do.

17:17:09 6 **Q** And part of what they asked, does it relate to reporting
7 external employment positions, including research activities,
8 and if they're going to seek those external employment
9 positions, to request permission from Texas A&M?

17:17:24 10 **A** That is correct. They do that to prevent conflicts of
11 interest.

17:17:28 12 **Q** And on September 30th of 2013, did the defendant fill out
13 and file that financial disclosure with Texas A&M?

17:17:38 14 **A** Yes. Dr. Cheng certified and submitted his financial
15 disclosure to A&M --

17:17:42 16 *(Video conference signal lost; court reporter logged back*
17 *in.)*

17:17:42 18 **THE REPORTER:** Your Honor, this is the reporter. I
19 lost connection. The last question I heard was, "And on
20 September 30th of 2013, did the defendant fill out and file that
21 financial disclosure with Texas A&M?"

17:19:18 22 **THE COURT:** I think you got to go back. I'll leave it
23 up to counsel to decide what you want to do, but any connection
24 with the -- Mr. Gallagher?

17:19:26 25 **MR. GALLAGHER:** I will have no objection if the

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witness just wants to summarize or restate his answers regarding Dr. Cheng's view of the financial disclosure requirement that Mr. McIntyre asked him about, and what was -- I think it was the contents of that, and then whether or not it was acknowledgment that he read them. I think those were the contents that the court reporter missed. So that doesn't need to proceed by question and answer.

MR. MCINTYRE: So I think he wants -- I think where she dropped off was on September 30th. So you can tell me about the financial disclosure -- (video interference) -- of 2013.

THE COURT: Hold on. Hold on. Someone just left. Did we lose the court reporter again?

THE REPORTER: No, Your Honor, I'm here.

THE COURT: Okay.

A All right. So on September 30th of 2013, Dr. Cheng did certify and submit an annual financial disclosure to Texas A&M University -- (video interference) -- any Chinese university --

THE COURT: Hold on. Hold on. I don't know -- we have people -- I don't know. We have people -- people are leaving and coming on Jabber. So every time it happens, I got to ask if that's the court reporter.

THE REPORTER: I'm here, Your Honor.

THE COURT: Okay. Thank you.

A Okay. I'll repeat that part.

On September 30th, 2013, Dr. Cheng certified and submitted

Mr. McIntyre Direct of Daniel Snow

1 an annual financial disclosure to Texas A&M University. He did
2 not list any Chinese external employment or research activities.

17:20:51 3 Thereafter, in July of 2015, Dr. Cheng affirmed to a Texas
4 A&M compliance officer, as part of the ad- -- grant
5 administration, that he had read the language regarding the NASA
6 funding restrictions, and he would not share his research or
7 technology or equipment with anyone affiliated with China or a
8 Chinese company.

17:21:23 9 **BY MR. MCINTYRE:**

17:21:24 10 **Q** Okay. Let's move to the time period of 2012 to 2018, and I
11 want to talk to you about publications either authored or
12 credited to the defendant.

17:21:34 13 During that time period, how many research papers authored
14 or credited to the defendant associated him with the Guangdong
15 Provincial Key Laboratory on Functional Soft and Dense Matter in
16 Guangdong University?

17:21:51 17 **A** Yeah. Approximately 13.

17:21:54 18 **Q** And how many research papers during that time period,
19 authored or credited to the defendant, listed him as affiliated
20 with both Guangdong University of Technology and Texas A&M
21 University?

17:22:07 22 **A** Eight of those publications listed him as affiliated with
23 both universities.

17:22:13 24 **Q** And how many research papers authored or credited to the
25 defendant acknowledged financial support from the National

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Science Foundation of China?

A Fourteen.

Q And were there any reasonable -- (video interference) --
authored or credited to the defendant that --

THE COURT: Hold on. Is the court reporter on?

THE REPORTER: I'm here, Your Honor.

THE COURT: Okay. Who just joined on Jabber?

(No response.)

(Video interference.)

THE COURT: Does anybody have any idea what's
happening here? I mean, we keep having people coming and going.

MR. MCINTYRE: I have no idea.

MS. FERKO: Your Honor, this is Carolyn Ferko with the
U.S. Attorney's Office. I can see, in the corner, it just says,
"Jabber Guest Has Joined," and then it says, "Jabber Guest Has
Left."

THE COURT: That's what I see as well. I'm just
trying to -- I'm just trying to figure out who it is.

MS. FERKO: Okay. But it doesn't specify anybody.

THE COURT: Okay. Please proceed.

MR. GALLAGHER: Sorry. Mr. McIntyre, I'm sorry. I
just want to confirm something. I apologize.

Can I just ask the interpreter: Mr. -- or Dr. Cheng
was just waving his hand. Is he still hearing everything fine?

THE INTERPRETER: This is the interpreter speaking.

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1 Dr. Cheng just thought you guys were talking about people
2 leaving his physical room, not the Jabber room.

1 7 : 2 3 : 4 6 3 **THE COURT:** No. No worries. Thank you very much.

1 7 : 2 3 : 4 8 4 Okay. Proceed.

1 7 : 2 3 : 5 2 5 **BY MR. MCINTYRE:**

1 7 : 2 3 : 5 2 6 **Q** Okay. During this time period, were there -- were there
7 research papers that acknowledged there was financial support,
8 both National Science Foundation of China and NASA, that were
9 authored or credited to the defendant?

1 7 : 2 4 : 1 0 10 **A** Yes. Two publications listed support from the National
11 Science Foundation of China and the NASA grant specifically.

1 7 : 2 4 : 1 9 12 **Q** And during the time period of A&M employment and the NASA
13 grant, did the defendant attempt to obtain any patents in China?

1 7 : 2 4 : 2 8 14 **A** Yes. He had two Chinese patents as a result of his work
15 with Guangdong University of Technology. They were filed in
16 2016 and 2017.

1 7 : 2 4 : 3 8 17 **Q** And in regards to the 2016 patent, what did that involve,
18 and who was involved in obtaining that patent?

1 7 : 2 4 : 4 5 19 **A** Dr. Cheng was listed as the inventor on the Guangdong
20 University patent. It was filed on June 15th of 2016, and it
21 was related to microfluidic chip devices and microfluidic
22 channel structures.

1 7 : 2 5 : 0 4 23 **Q** And those patent rights of which the defendant was the
24 inventor, who ended up, ultimately, with having those
25 transferred -- those rights transferred to?

Mr. McIntyre Direct of Daniel Snow

1 A Yeah. In July of 2017, those rights were transferred to
2 include both Guangdong University of Technology and Ge Wei, Ltd.

17:25:27 3 Q Which is the company that the defendant has an ownership
4 interest in; is that correct?

17:25:31 5 A That is correct.

17:25:33 6 Q And during the course of the investigation, were the agents
7 able to obtain an employment contract between Guangdong
8 University of Technology and the defendant?

17:25:44 9 A Yes, they were.

17:25:47 10 Q And can you tell me the term of employment that this
11 contract had in mind?

17:26:06 12 Do you know what the term of --

17:26:10 13 A Refer to my notes.

17:26:11 14 No, I'm not sure of the actual term on the Guangdong
15 contract.

17:26:17 16 Q Okay. And pursuant to that contract, was he paid, or do you
17 recall?

17:26:24 18 A Yes, he was paid.

17:26:26 19 Oh, I do -- the contract was September 2011 through August
20 of 2014.

17:26:33 21 Q Okay. And how much was he paid by Guangdong University of
22 Technology during that time period?

17:26:40 23 A Approximately \$60,000 U.S.

17:26:46 24 Q And what were some of the work objectives included in the
25 employment contract between Guangdong University and the

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1 defendant?

17:26:55 2 **A** His work objectives were to establish the Soft Matter
3 Institute and to recruit top-notch foreign talent regarding
4 technology.

17:27:13 5 **Q** Now, from 2012 to 2020, was the defendant required to file
6 these financial disclosure statements each year?

17:27:30 7 **A** He was.

17:27:31 8 **Q** And did he file those financial disclosure statements?

17:27:35 9 **A** Yes. Dr. Cheng did file the disclosure statements, and they
10 did not include any external employment or research activities.

17:27:44 11 **Q** And that is even though those questions were specifically
12 asked; is that correct?

17:27:50 13 **A** Yes, that is correct.

17:27:52 14 **Q** And was A&M contacted about what they would have done if the
15 defendant had correctly disclosed, in his financial disclosure,
16 his employment, talent program, and other business in China?

17:28:10 17 **A** Yes. A&M was asked that, and they would have had to notify
18 NASA, which would have resulted in them not obtaining the grant.

17:28:21 19 **Q** And NASA was also asked, if that information was relayed to
20 them, what they would do; is that correct?

17:28:27 21 **A** Yes. They would not have -- they would have pulled the
22 grant at that time.

17:28:34 23 **Q** Now, in 2016, did the defendant apply for a particular
24 position at Texas A&M University?

17:28:46 25 **A** Yes. He -- at the time he was an associate professor, and

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1 he was applying for a full professorship, and he submitted an
2 application to Texas A&M in March of 2016.

17:28:59 3 Q And along with that application, did he submit a curriculum
4 vitae and a declaration stating that everything in the
5 curriculum vitae was correct?

17:29:10 6 A He did.

17:29:11 7 Q And did he disclose any of the Chinese associations that
8 we've talked about before with Guangdong University of
9 Technology, other institutions, Ge Wei, or the Chinese talent
10 programs?

17:29:24 11 A He did not disclose any Chinese associates or affiliations.

17:29:30 12 Q Okay. I'm going to take you all the way up to June 22nd of
13 2020, which is approximately two months ago.

17:29:36 14 As part of the defendant's employment, did the college and
15 engineering --

17:29:45 16 MR. GALLAGHER: Hold up. The interpreter has her hand
17 up.

17:29:48 18 THE COURT: Hold on.

17:29:49 19 THE INTERPRETER: Sorry. This is the interpreter
20 speaking. Could someone -- I think someone's making a lot of
21 background noise, maybe moving things around. Could anybody
22 who's not talking just mute their microphone?

17:29:57 23 Thank you so much.

17:30:08 24 BY MR. MCINTYRE:

17:30:08 25 Q Okay. On June 22nd of 2020, just a couple of months ago,

Mr. McIntyre Direct of Daniel Snow

1 was the defendant asked to or required to file a disclosure with
2 Texas A&M regarding the College of Engineering?

17:30:24 3 **A** Yes. The College of Engineering did request that.

17:30:28 4 **Q** Okay. And I'm going to go through some of the questions
5 that were asked and responses in that Texas A&M College of
6 Engineering disclosure, if you could.

17:30:42 7 Can you -- was there a question and, if so, can you read it
8 about conducting external consulting or other employment?

17:30:49 9 **A** Yes. The question asked: (Reading) Did you conduct any
10 external consulting or other employment activities outside your
11 position?

17:30:59 12 He answered no.

17:31:03 13 **Q** And in regard to -- was he asked regarding whether he had
14 had any position, role, distinction in another foreign or
15 domestic entity, for example, adjunct, visiting, guest,
16 honorable chair, et cetera?

17:31:20 17 **A** Yes. He answered no.

17:31:22 18 **Q** He answered no to that question, also?

17:31:24 19 **A** Yes.

17:31:29 20 **Q** Was he asked a question about whether he conducted research
21 under any external award or subaward not managed by Texas A&M
22 University?

17:31:40 23 **A** Yes, he was, and he answered no.

17:31:44 24 **Q** Was he asked about whether he had listed any affiliation
25 other than Texas A&M University on publications?

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17:31:51 1 **A** Yes, and he answered no.

17:31:53 2 **Q** And was he asked about whether he had participated in any
3 foreign talent program?

17:31:58 4 **A** Yes, and he answered no.

17:32:06 5 **Q** Now, in regards to his knowledge about the China
6 restrictions, was there an e-mail correspondence in April of
7 2015 (inaudible) --

17:32:17 8 **THE REPORTER:** I'm sorry. Could you speak up a
9 little, Mr. McIntyre?

17:32:17 10 **BY MR. MCINTYRE:**

17:32:17 11 **Q** -- and the defendant regarding the visiting scholar?

17:32:26 12 **THE COURT:** Mr. McIntyre, we need you to speak up.
13 The court reporter's having trouble hearing you.

17:32:31 14 **MR. MCINTYRE:** Okay. I'm sorry.

17:32:32 15 Yeah. Can y'all hear me now?

17:32:40 16 **THE COURT:** (Indicating.)

17:32:41 17 **BY MR. MCINTYRE:**

17:32:42 18 **Q** Okay. So in April of 2015, was there e-mail communications
19 between a Texas A&M compliance officer and the defendant?

17:32:51 20 **A** Yes.

17:32:53 21 **Q** And what --

17:32:54 22 **A** Dr. Cheng --

17:32:55 23 **Q** -- did those e-mail communications concern?

17:32:57 24 **A** He e-mailed the compliance officer regarding -- inquiring
25 about a visiting scholar participating. Compliance denied the

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request. Dr. Cheng then e-mailed the visiting scholar that he could not work on the grant because, specifically, of the funding being restricted with NASA regarding collaboration with China.

Q Now, in 2014, were there e-mail communications regarding the defendant and his research team coordinating with Guangdong University of Technology on NASA research?

A Yes. In April of 2014, Dr. Cheng forwarded an e-mail to -- from a Guangdong University of Technology researcher to one of his Texas A&M researchers. It contained results of some scientific research. The Guangdong University researcher was added to a series of e-mails among Dr. Cheng and the -- his Texas A&M research students.

Q And so was there a question that was raised on whether the research done by the Guangdong University of Technology researcher, whether he should receive attribution for that?

A Yes. While publish- -- preparing to publish that research, the Texas A&M researcher asked Dr. Cheng who should be listed as authors. Dr. Cheng e-mailed back and stated that the Guangdong University researcher is hard right now because of the NASA prohibitions.

Q Now, after that, did -- was there e-mail communications between a NASA employee and the defendant regarding the NASA grant and what is called "deliverables"?

A Yeah. Back in July of 2014, Dr. Cheng e-mailed NASA a

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1 deliverable, which is a progress report that is required to --
2 for the grant to be continuously going. It is entitled, "Year
3 2013-2014 report on Liquid Crystals of Nanoplates."

17:35:33 4 Q And did the deliverables that was -- that were e-mailed to
5 NASA to show their progress and maintain the grant, did it
6 contain research results from the Guangdong University of
7 Technology researcher?

17:35:45 8 A It did.

17:35:46 9 Q And it's the same research results that you were talking
10 about previously; is that correct?

17:35:51 11 A Yes.

17:35:53 12 Q And, in fact, in 2014, was there an e-mail between one of
13 the A&M researchers working on the NASA grant and the defendant
14 regarding how much work they had done?

17:36:09 15 A Yes.

17:36:12 16 Q And what did the researcher inform the defendant about how
17 much work the U.S.-based NASA research team had done on the NASA
18 grant?

17:36:23 19 A That implied that they had done -- they had not done much
20 research at all.

17:36:36 21 Q Now, in relation to Guangdong University in June of 2015,
22 was -- did Guangdong University publish an article or report on
23 soft matter?

17:36:50 24 A Yes.

17:36:52 25 Q And can -- can you tell me the title of that publication

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1 that was put out from Guangdong University?

17:36:59 2 **A** Yes. It was "Observation of isotropic [sic] demixing and
3 colloidal platelet-sphere mixtures."

17:37:08 4 **Q** And in the financial acknowledgments regarding who supported
5 the research that went into this Guangdong University of
6 Technology research paper, who did they credit with financial
7 support?

17:37:22 8 **A** The National Science Foundation and the specific NASA grant.

17:37:28 9 **Q** And did they acknowledge any employees that contributed to
10 that publication?

17:37:35 11 **A** Yes. In the acknowledgment, they -- it was -- the authors
12 were listed as two Guangdong employees, one Guangdong University
13 researcher, and two Texas A&M researchers, and Dr. Cheng.

17:37:51 14 **Q** And when you said financial support from NASA -- from NASA
15 and the National Science Foundation, you mean the National
16 Science Foundation of China; is that correct?

17:38:00 17 **A** That is correct.

17:38:02 18 **Q** Now, as part of his employment -- the defendant's employment
19 with Guangdong University, was there a PowerPoint that he
20 prepared and e-mailed to a professor at Guangdong University of
21 Technology in June of 2015?

17:38:16 22 **A** Yes, it was. It was entitled "1st Year Results & Future
23 Direction of the Lab [sic]."

17:38:24 24 **Q** Now, in this PowerPoint, there were sections regarding
25 technology in liquid crystals, and then there were subsections;

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1 is that correct?

17:38:34 2 **A** That is correct.

17:38:36 3 **Q** And on the subsection CRP, who was credited with the
4 research in this -- the PowerPoint presentation presented to
5 Guangdong University of Technology?

17:38:46 6 **A** Two TMAU [sic] researchers and one Guangdong researcher.

17:38:52 7 **Q** And on the "Liquid Crystals" subset "Nanoplate Surfactants,"
8 who was credited for the research that went into this going on
9 at Guangdong University?

17:39:03 10 **A** Four Texas A&M researchers.

17:39:07 11 **Q** And on the "Liquid Crystals" subset "Hydrogels," who was
12 credited for the research on that particular area?

17:39:16 13 **A** One Texas A&M researcher.

17:39:18 14 **Q** And on the "Liquid Crystals" "Carbon Material [sic]," who
15 was credited regarding that research?

17:39:24 16 **A** One Texas A&M researcher.

17:39:26 17 **Q** And on the "Energy Material" subset "Nano fluids," who was
18 credited regarding that research?

17:39:34 19 **A** One Texas A&M researcher.

17:39:37 20 **Q** Now, as far as this presentation that the defendant e-mailed
21 to his professor at Guangdong University of Technology, which
22 detailed his first-year research results, how many Texas A&M
23 researchers were involved in this PowerPoint presentation
24 detailing his first-year research results?

17:40:07 25 **A** The total was eight.

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17:40:09 1 Q And how many of those eight Texas A&M researchers were
2 funded pursuant to the NASA grant?

17:40:17 3 A Dr. Cheng, along with five other researchers.

17:40:25 4 Q How much money did the defendant -- I know the amount in the
5 grant, but how much money did the defendant personally receive
6 from the NASA grant?

17:40:35 7 A Approximately \$86,000.

17:40:38 8 Q And during the course of the administration's grant, there
9 were wire transmissions; is that correct?

17:40:46 10 A Yes. From February 2014th [sic], through December of
11 2019 -- yeah --

17:40:54 12 Q How many invoices --

17:40:54 13 A -- 2019.

17:40:54 14 Q How many invoices were sent by wire, and where were they
15 sent from and to?

17:40:59 16 A So Texas A&M University sent 83 invoices by wire from
17 College Station to NASA, which that office was located in
18 Mississippi.

17:41:15 19 Q Now, when the defendant --

17:41:16 20 A Those wires --

17:41:16 21 Q -- was arrested, was he Mirandized, and did he make
22 statements in a videotaped interview?

17:41:25 23 A He did.

17:41:27 24 Q Okay. I was going to have you go through the admissions
25 that the defendant made during his videotaped interview, just

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the highlights, if you could.

So did he affirm his employment with Guangdong University of Technology?

A He did, both as a chair/professor and special hire.

Q And did he affirm his professorship at SUS Tech in China, also Southern University of Science?

A Yes, he did, as a visiting professor.

Q And did he affirm his position at Foshan City Ge Wei Technology, Ltd.?

A He did.

Q And what did he say about his participation in a Hundred Talent contract program at Guangdong University of Technology?

A Yeah. He affirmed that he started the Hundred Talent contract at -- in 2011 at Guangdong University.

Q Did he say whether or not he disclosed his Southern University of Science --

MR. GALLAGHER: Mr. McIntyre --

MR. MCINTYRE: Yes. Sorry.

MR. GALLAGHER: -- we lost some people again. I just want to confirm we've got the judge --

MR. MCINTYRE: Oh, okay. Thank you.

MR. GALLAGHER: -- and court reporter.

THE REPORTER: The court reporter is here.

MR. GALLAGHER: Great.

Judge Edison?

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Maybe we need to wait a sec. Sorry.

MR. MCINTYRE: This is like --

THE COURT: I'm here. I'm here. I can hear everything and see everything. I followed the court reporter's [sic] request to put myself on mute. So therefore, when I was talking, you couldn't hear me. So I apologize.

MR. MCINTYRE: So we're all good?

BY MR. MCINTYRE:

Q So did the defendant state whether he disclosed his employment with Southern University of Science on his Texas A&M financial disclosure statement?

A He affirmed he did not put his employment on the statement.

Q And did he affirm that he had not put any of his Chinese employment or not previously disclose that to Texas A&M?

A Yes. He said he -- it was not disclosed, and he would disclose it now.

Q And what did he say about the Chinese Thousand Talent Plan [sic] application?

A He said that he had applied to two -- two talent -- he acknowledged that his -- he had applications in for two universities.

Q And did the defendant say what he would do if he went back to China as far as employment?

A Yes. He said if he went back to -- permanently back to China, that he would seek employment with the University of

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1 Science and Technology of China, which was his alma mater, and
2 he has classmates that are Chinese Academy of Science members
3 there.

17:44:39 4 Q And what did he say about the Chinese grant in Foshan City
5 Ge Wei, his company?

17:44:46 6 About whether they had received a Chinese grant?

17:44:57 7 A Oh, he did say he received Chinese grants. He did affirm
8 that.

17:45:05 9 Q Did he also go over his salary wage spreadsheet regarding
10 his Hundred Talents Program?

17:45:13 11 A He did. He affirmed that it was accurate.

17:45:18 12 Q And did he talk about CRP spheres and CRP disc and whether
13 he had mixed research between Texas A&M and Guangdong University
14 of Technology?

17:45:31 15 A Yes. He did affirm that there were mixture of the
16 universities' research in the publications.

17:45:46 17 Q And was he asked whether there was a conflict between his
18 NASA research and his Guangdong University of Technology
19 research?

17:45:51 20 A He did say that he did see a possible conflict.

17:45:56 21 Q And at any point in time, did he blame anyone for the
22 collaboration between his Texas A&M NASA student work on the
23 NASA grant and the work done at the Guangdong University of
24 Technology lab?

17:46:08 25 A Yes. He blamed Guangdong University of Technology Professor

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1 Yun Chen.

17:46:21 2 Q Did he talk, also, about one of the NASA grant participants
3 that worked in the lab and whether that person did research for
4 Guangdong University of Technology?

17:46:34 5 A Yes, he did.

17:46:36 6 Q And what did he say?

17:46:38 7 A That -- he said that the issue was the NASA money only
8 supported one student, and with more students, NASA could have
9 got more benefit.

17:46:52 10 Q And what did the defendant say about his affiliations
11 currently with Guangdong University of Technology and Foshan
12 City Ge Wei Technology Company?

17:47:02 13 A He -- he affirmed he's still affiliated with Guangdong
14 University of Technology and stated that he's tried to separate,
15 but it was difficult.

17:47:13 16 Q And what did he state about why he did not disclose these
17 things to his Texas A&M department head, his Chinese employment?

17:47:23 18 A He said that if he would have told his department head,
19 there would have been more for him to worry about.

17:47:31 20 Q And during the -- during the interview, did he acknowledge
21 making mistakes?

17:47:36 22 A He did. He acknowledged he made mistakes.

17:47:41 23 Q And did he comment on using Guangdong University of
24 Technology lab research on the NASA project and whether that was
25 good or bad?

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17:47:52 1 A He did. He confirmed he used Guangdong research, and he
2 said it was good for NASA.

17:48:03 3 Q Now, was he asked about wire transfers into his wife's bank
4 account here in the United States?

17:48:12 5 A He was.

17:48:14 6 Q And do you know anything about that as far as how many wires
7 and how much money was wired in from China?

17:48:19 8 A Yes. It was approximately six wires; approximately
9 \$250,000.

17:48:28 10 Q And did he give a reason for why that money was wired into
11 his wife's account or an explanation?

17:48:34 12 A Yeah. It was to purchase a house for a friend.

17:48:42 13 Q And at some point, did the defendant talk about
14 collaborating with China and what he wanted to do going forward?

17:48:57 15 A Yeah. He -- he wanted to -- he wants to work at Texas A&M
16 in Qatar because his child can visit him there, and he was sorry
17 about any collaboration with the NASA project because he didn't
18 think NASA was serious about no Chinese collaboration.

17:49:21 19 Q And prior to making these two statements, just immediately
20 prior, did he state that he wanted to stop collaborating with
21 China?

17:49:28 22 A Yes, he did.

17:49:33 23 Q Now, towards the end of the interview, was Cheng asked
24 whether he was afraid that if NASA found out about his Chinese
25 employment and research, that he would lose the NASA grant?

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17:49:48 1 **A** Yes. At that point, he became emotional and stated yes.

17:49:55 2 **Q** Let me -- I had an exhibit, which I marked as Exhibit 1,
3 which is a spreadsheet of his travel. Do you have that in front
4 of you?

17:50:05 5 **A** I do.

17:50:07 6 **Q** Okay. I'm not going to grind down on this too hard, but can
7 you kind of just briefly tell the Court what sort of travel he's
8 had over the past years based on your analysis of this
9 spreadsheet?

17:50:21 10 **THE COURT:** Do I have this spreadsheet?

17:50:23 11 **MR. MCINTYRE:** I e-mailed it to the case manager and
12 to --

17:50:27 13 **THE COURT:** Okay. Hold on. I'm going to have -- I'm
14 going to listen to you, but I'm not going to see you because I
15 got to look -- I'm going to try to look at my e-mail to see if I
16 have it. So hold on.

17:50:36 17 **MR. GALLAGHER:** I'll just point out I haven't been
18 provided this.

17:50:39 19 **THE COURT:** Okay. Well, then, we're not talking about
20 it unless you give it to Mr. Gallagher.

17:50:43 21 **MR. MCINTYRE:** Okay. I e-mailed it to both of y'all.

17:50:47 22 **MR. GALLAGHER:** What --

17:50:49 23 **MR. MCINTYRE:** I e-mailed it to Mr. Bostic, and I
24 e-mailed --

17:50:52 25 **THE CASE MANAGER:** I forwarded it to you earlier

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1 today, sir.

17:50:58 2 **MR. GALLAGHER:** I'm sorry. It would be an e-mail from
3 Mr. Bostic?

17:51:02 4 **MS. FERKO:** It would be an e-mail from Mr. McIntyre.

17:51:05 5 **MR. MCINTYRE:** I cc'd Ferko on it, too. I sent an
6 e-mail.

17:51:10 7 **MR. GALLAGHER:** I suspect you spelled my name wrong
8 because I haven't received any e-mails from you, Mr. McIntyre,
9 at all today.

17:51:16 10 **MR. MCINTYRE:** Really?

17:51:17 11 **MS. FERKO:** I'm going to send it to you right now.

17:51:19 12 **MR. GALLAGHER:** Okay.

17:51:22 13 **THE INTERPRETER:** This is the interpreter speaking.
14 Is there any chance you can send me a copy, as well, just so I
15 have it in front of me?

17:51:28 16 **MS. FERKO:** If you can provide me your e-mail address,
17 I can do that.

17:51:32 18 **THE INTERPRETER:** Sure thing. It is T-I-A-N-L-U at,
19 again, T-I-A-N-L-U, and then the word "Chinese," C-H-I-N-E-S-E,
20 dot com. So Tianlu@tianluChinese.com.

17:51:55 21 **MS. FERKO:** Okay. Let me --

17:51:56 22 **THE INTERPRETER:** Thank you so much.

17:51:57 23 **MS. FERKO:** -- do this really fast.

17:51:59 24 **MR. GALLAGHER:** It's probably not that important. I
25 mean, he can just say it, what's on Mr. --

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17:52:03 1 **MS. FERKO:** Yeah. If you could summarize it, and then
2 I'll send copies of what you intended.

17:52:07 3 **MR. MCINTYRE:** I mean, it's -- there's no magic sauce
4 in it, just...

17:52:13 5 Is the judge still on or...?

17:52:18 6 **THE COURT:** I'm on. I'm just looking at my e-mails.
7 I can't -- if I look at my e-mails, I have to -- I can still
8 hear you. I just can't see you.

17:52:27 9 **MR. MCINTYRE:** No. Well, Your Honor, it's not that
10 important of an exhibit if -- I mean, he can just tell -- tell
11 you what the travel is. He doesn't...

17:52:37 12 **THE COURT:** Whatever -- I have the exhibit. Whatever
13 you want to do. It's your --

17:52:40 14 **MR. MCINTYRE:** Well, I mean, I was planning on using
15 it, but it's not a major deal.

17:52:45 16 **BY MR. MCINTYRE:**

17:52:46 17 **Q** Can you briefly tell me how much travel he had and what part
18 of -- what percentage of the time, over the past year, did he
19 visit China?

17:52:58 20 **A** Yes. From 2012 to 2019, Dr. Cheng took approximately
21 28 trips to China and spent 905 days -- approximately 31 percent
22 of those eight years was spent in China.

17:53:16 23 **Q** Now, what I sent as Exhibit 2 -- I don't know if anybody got
24 it.

17:53:26 25 Have you reviewed a document from U.S. Citizen [sic] and

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1 Immigration Services?

17:53:32 2 **A** I have.

17:53:34 3 **Q** And it relates to a petitioner, which is the defendant; is
4 that correct?

17:53:38 5 **A** That is correct.

17:53:40 6 **Q** And can you tell the Court what happened regarding his
7 petition regarding immigration?

17:53:48 8 **A** Yeah. The document explains that on December 14th of 2015,
9 Dr. Cheng filed a petition on behalf of a son to get an I-130
10 petition. In March of -- March 27th of 2018, he received
11 notification --

17:54:11 12 **THE INTERPRETER:** I'm sorry. This is the interpreter.
13 There's a lot of echo. Could whoever's not talking just mute
14 their microphone, please? Thank you.

17:54:24 15 **A** Okay. And on March 27th, 2018, Dr. Cheng received a letter
16 from Citizenship and Immigration Services, intent to revoke his
17 application (video interference) and notice of intent, and the
18 listed reasons was during the interview he submitted to in
19 Guangzhou at the U.S. Consulate in China, it was discovered that
20 he did not have a biological relationship with the child and
21 that he did not formally adopt the child, and that he had
22 presented a fraudulent birth certificate listing the child as
23 biological.

17:55:06 24 Based on those reasons, they -- they -- they revoked the
25 application.

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17:55:09 1 **BY MR. MCINTYRE:**

17:55:09 2 **Q** And so the end result -- because of the fraudulent birth
3 certificate and the lack of the relationship, the defendant's
4 son was not allowed to receive any sort of immigration benefit
5 from Citizen [sic] and Immigration Services; is that correct?

17:55:32 6 **A** That is correct.

17:55:33 7 **Q** And what was the date of the denial of immigration benefit
8 for the defendant's son?

17:55:39 9 **A** March 27th of 2018.

17:55:42 10 **THE COURT:** Help me understand. I'm confused. I
11 thought you said it's not his son.

17:55:49 12 **MR. MCINTYRE:** I think --

17:55:49 13 **THE WITNESS:** It's not -- it is not his biological
14 son. He presented the application -- the I-130 is a petition
15 for an alien relative. So he presented the application as if it
16 was a biological son and presented a fraudulent birth
17 certificate to back up that claim.

17:56:07 18 Other evidence --

17:56:10 19 **THE COURT:** Who is the person?

17:56:12 20 **THE WITNESS:** So the -- there was not -- there was no
21 formal adoption. The child was given birth to by a friend of
22 his, which they gave to them to raise.

17:56:28 23 **THE COURT:** Okay.

17:56:31 24 **BY MR. MCINTYRE:**

17:56:31 25 **Q** Okay. And so the immigration benefits were denied in 2018;

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1 is that correct?

17:56:36 2 **A** That is correct.

17:56:47 3 **Q** So based on your understanding of the case, the judge will
4 make a decision on whether there's a preponderance of the
5 evidence to show flight risk.

17:56:54 6 Is there any evidence that you have that you would like to
7 share with the Court that you believe shows the defendant would
8 be a flight risk if released on bond?

17:57:03 9 **A** Yes. I believe his business association in China, his
10 current employment with Guangdong University of Technology, his
11 family interest -- his wife and child were last known to be in
12 China --

17:57:19 13 **MR. GALLAGHER:** Your Honor, I object. This is
14 narrative and restating evidence that's already been presented
15 to the Court. If there's new evidence, the government can get
16 to it, but there's no need for -- there's no need for a
17 witness's opinion regarding weight of the evidence.

17:57:35 18 **THE COURT:** I'm going to overrule that objection.

17:57:40 19 **MR. MCINTYRE:** Yeah. It's a factual question.

17:57:41 20 **BY MR. MCINTYRE:**

17:57:41 21 **Q** Do you have any evidence that you're aware of, from your
22 investigation or your study of the case, that would indicate he
23 might not comply with bond restrictions?

17:57:51 24 **A** Yeah. His ownership -- yeah. His ownership and the
25 business entity Ge Wei, his continued employment with Guangdong

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University of Technology, his family interest, of course, and he -- it has been shown that he has received Chinese grants.

So he has the ability to continue his research and receive Chinese grants in China, and -- and the reason that he's submitted fraudulent documents to the U.S. Government to try to obtain a visa for his son.

MR. MCINTYRE: I pass the witness, Your Honor.

THE COURT: Mr. Gallagher?

MR. GALLAGHER: Thank you.

CROSS-EXAMINATION

BY MR. GALLAGHER:

Q All right. You spoke briefly with the 28 -- you're talking about the 28 trips to China; is that right?

A Yes.

Q Were all those using his United States passport?

A As far as we know.

Q Right.

Do you have any evidence that he used any other passport to make any of those trips?

A I do not.

Q Do you have any evidence that he ever took a trip outside the country without legitimate travel documents?

A No, I do not.

Q And he was arrested at the airport returning to the country, correct?

Mr. Gallagher Cross of Daniel Snow

17:59:12 1 A That is correct.

17:59:14 2 Q Returning from Qatar?

17:59:16 3 A Yes.

17:59:16 4 Q And Texas A&M has a branch in Qatar -- in Qatar, correct?

17:59:22 5 A That is correct.

17:59:22 6 Q And so that was his duty station most recently for

7 Texas A&M, correct?

17:59:27 8 A That is correct.

17:59:34 9 Q And so up until current events, he has maintained his

10 full-time employment with Texas A&M since what was, I think,

11 2005; is that fair?

17:59:44 12 A 2004.

17:59:45 13 Q Thank you. Sorry.

17:59:46 14 But that's correct, right?

17:59:47 15 A That is correct.

17:59:48 16 Q All right.

17:59:48 17 All right. I just want to make sure I'm clear about the

18 size of the grant.

17:59:56 19 You said the total grant was 747,000; is that right?

18:00:03 20 A That is correct.

18:00:04 21 Q And so that was spread over seven years, right?

18:00:08 22 A Yes.

18:00:10 23 Q Sorry. Was that, "Yes"?

18:00:12 24 A Yes.

18:00:13 25 Q Okay. Sorry. I didn't hear.

Mr. Gallagher Cross of Daniel Snow

18:00:15 1 So the annual value for the grant is just slightly over
2 \$100,000, correct?

18:00:20 3 **A** Yes, that is correct. I believe the first year was 75,000.

18:00:24 4 **Q** Okay. So it may not have been an even, but on average over
5 the seven years, that's correct?

18:00:29 6 **A** That is correct.

18:00:30 7 **Q** All right. And the total amount received from this grant by
8 Dr. Cheng was 86,000, right?

18:00:43 9 **A** Yes.

18:00:44 10 **Q** All right.

18:00:44 11 *(Multiple speakers; indiscernible.)*

18:00:46 12 **BY MR. GALLAGHER:**

18:00:49 13 **Q** I'm sorry?

18:00:49 14 **A** The total expenditure was 662,000 of the 83 invoices from
15 Texas A&M.

18:00:56 16 **Q** Right.

18:00:56 17 But I -- you testified -- correct me if I'm wrong. I
18 thought you testified that Dr. Cheng received \$86,000 from this
19 grant; is that correct?

18:01:06 20 **A** That is correct.

18:01:07 21 **Q** All right. And so, again, that's over seven years, right?

18:01:11 22 **A** Yes.

18:01:12 23 **Q** All right. So the average annual value is, what, 12- or
24 \$13,000, right?

18:01:18 25 **A** Yes.

Mr. Gallagher Cross of Daniel Snow

18:01:19 1 Q Okay.

18:01:19 2 Oh, I should have started -- you mentioned that you are
3 familiar -- familiarized yourself with the facts regarding this
4 case to prepare for today, right?

18:01:33 5 A Yes.

18:01:35 6 Q So I'm sure you read the complaint, right?

18:01:37 7 A I did.

18:01:38 8 Q And you didn't write that, correct?

18:01:40 9 A No, I did not.

18:01:42 10 Q All right. So what else did you -- what else did you do to
11 familiarize yourself with the facts?

18:01:47 12 A Conversations with the investigating agents.

18:01:51 13 Q Okay. Had you been involved in the investigation?

18:01:54 14 A No. By the time I came to this office, the investigation
15 was mostly complete.

18:02:00 16 Q Okay. Were you present for the interview of Dr. Cheng you
17 discussed?

18:02:05 18 A I was not.

18:02:06 19 Q Okay. So -- all right. So everything you've said today is
20 based on what you heard from other agents and/or read, correct?

18:02:17 21 A That is correct.

18:02:18 22 Q All right. And Dr. Cheng is a naturalized citizen, right?

18:02:28 23 A Yes.

18:02:29 24 Q And when did he naturalize?

18:02:32 25 A He naturalized in 2013.

Mr. Gallagher Cross of Daniel Snow

18:02:37 1 Q And that's valid, right? There's no issue -- nothing's been
2 filed in relation to that, correct?

18:02:45 3 A No, not that I know of.

18:02:48 4 Q And he has maintained -- I think you said that he spent
5 about a third of the time over the past several years outside
6 the country, right?

18:02:56 7 A That's correct. Approximately 31 percent.

18:02:59 8 Q But since 2005, he spent the majority of his time in the
9 United States, right?

18:03:03 10 A Yes.

18:03:04 11 Q All right. And his wife has lived here with him until he
12 went to Qatar, right?

18:03:10 13 A Yes. Actually, his wife had to go back after the denial --
14 the revocation of the application. The child couldn't come
15 over.

18:03:22 16 Q Right.

18:03:22 17 So she's spending time with their son, who they're treating
18 as a child regardless of the -- they're caring for this child,
19 to the best of your knowledge, right?

18:03:31 20 A Yes. Yes.

18:03:32 21 Q Okay. And so she is, to the best of your knowledge, with
22 him now since Dr. Cheng is here, correct?

18:03:40 23 A That is correct.

18:03:44 24 Q And Dr. Cheng owns property in the College Station area,
25 right?

Mr. Gallagher Cross of Daniel Snow

18:03:48 1 A Yes.

18:03:50 2 Q About, what is it, five or six homes?

18:03:53 3 A I think seven.

18:03:56 4 Q All right. And throughout this -- all these years he spent
5 in the United States, you're not aware of any criminal history,
6 right?

18:04:05 7 A No.

18:04:21 8 Q I want to ask you a few questions about those research
9 papers you mentioned.

18:04:30 10 Okay. You said that -- tell me if I'm wrong. You said
11 there were 13 papers that identified Guangdong -- or his
12 affiliation with Guangdong research papers, right?

18:04:44 13 A That is correct.

18:04:46 14 Q And these are all papers published in English, right?

18:04:50 15 A I -- I'm not sure about that one.

18:04:55 16 Q You haven't seen any of these?

18:04:56 17 A I have not reviewed those publications.

18:04:59 18 Q Do you have any reason to believe any of them were published
19 in a language other than English?

18:05:04 20 A No.

18:05:05 21 Q Okay. And then you talked about eight papers listing his
22 affiliation with both Guangdong University and A&M, correct?

18:05:14 23 A That is correct.

18:05:16 24 Q And same thing: You don't have any reason to believe any of
25 those were published in anything other than English, correct?

Mr. Gallagher Cross of Daniel Snow

18:05:21 1 A No.

18:05:25 2 Q And, again, there were a number -- I think 14 publications
3 that acknowledged both Chinese and NASA support, right?

18:05:35 4 A Fourteen that acknowledged support from the National Science
5 Foundation of China.

18:05:40 6 Q And NASA, right?

18:05:41 7 A And then two of those --

18:05:44 8 Q Oh --

18:05:45 9 A -- actually had both NFC and NASA -- the NASA grant.

18:05:51 10 Q Oh, thank you. I misunderstood that. Okay.

18:05:53 11 So, again, same question: All of those -- do you have any
12 knowledge that any of those were published in any language other
13 than English?

18:06:00 14 A No, I do not.

18:06:02 15 Q And I think you indicated these are all, to your knowledge,
16 research papers, so generally available to the scientific
17 community, right?

18:06:08 18 A Yes.

18:06:10 19 Q All right.

18:06:21 20 So what day was Dr. Cheng arrested?

18:06:24 21 A August 23rd, on Sunday.

18:06:28 22 Q And we already said that was at the airport, right?

18:06:32 23 A Yes.

18:06:32 24 Q Okay. And he was -- you said he waived his Miranda rights?

18:06:40 25 A Yes.

Mr. Gallagher Cross of Daniel Snow

18:06:41 1 Q And for how long did he speak with investigators?

18:06:44 2 A I'm not exactly sure. I think it was approximately
3 two hours.

18:06:49 4 Q Okay. And so at any point did he stop answering questions?

18:06:53 5 A Not that I know of, no.

18:06:55 6 Q Was he uncooperative?

18:06:57 7 A No.

18:07:01 8 Q Has any contraband been found in the possession of Dr. Cheng
9 coming back into the country?

18:07:08 10 A No, not at this time.

18:07:20 11 Q And I guess -- I was a little unclear. You mentioned, I
12 think, wires going to his wife's account in the amount of
13 \$250,000, right?

18:07:34 14 A Yes.

18:07:35 15 Q And that was -- I think you said a total of six wires,
16 right?

18:07:39 17 A Yes.

18:07:40 18 Q What's the time frame for those?

18:07:43 19 A I'm not exactly sure of the actual time frame of the wires.

18:07:48 20 Q So you don't know whether it happened over the eight years
21 of this -- that we've been talking about or a shorter time
22 period?

18:07:54 23 A Well, I know it was a shorter time to purchase a home.

18:07:58 24 Q Okay. And so those wire transfers to his wife's account,
25 where did they come from?

Mr. Gallagher Cross of Daniel Snow

A From China.

Q Okay. And I guess you've already mentioned that -- well, certainly, Dr. Cheng and his wife have, in fact, purchased several homes in College Station, right?

A Yes.

Q And again, during your interview, I guess you talked about Dr. Cheng speculating what he would do if he had to return to China, right?

A Yes.

Q But did he indicate his preference was to continue his work with Texas A&M?

A I believe he did.

MR. GALLAGHER: I don't have any further questions, Your Honor.

THE COURT: Mr. McIntyre, anything further?

MR. MCINTYRE: No further questions, Your Honor.

MR. GALLAGHER: Oh, I'm sorry.

THE COURT: Hold --

MR. GALLAGHER: Mr. Cheng raised his hand.

THE COURT: -- on. Hold on.

Mr. Cheng, is there something you'd like to say, sir?

THE DEFENDANT: Can I point out a few mistakes?

MR. GALLAGHER: No. Hold on -- can I interrupt?

THE COURT: Yeah.

MR. GALLAGHER: Sorry, Your Honor.

18:09:29 1 Dr. Cheng, sorry. We're not having you testify at
2 this hearing. You'll have the opportunity to do that in the
3 future, if you choose, and you and I will speak privately about
4 all that at another time.

18:09:46 5 Thank you, Your Honor.

18:09:48 6 **THE COURT:** Okay. Dr. -- or Agent Snow, you may step
7 down from the witness chair. Thank you very much. I appreciate
8 it.

18:09:56 9 Mr. McIntyre, do you have any other witnesses?

18:10:00 10 **MR. MCINTYRE:** No, Your Honor.

18:10:02 11 **THE COURT:** Mr. Gallagher, any proffers?

18:10:06 12 **MR. GALLAGHER:** The only thing -- most of the
13 information from the pretrial report, the only point I will add
14 is that I have received a voicemail from Dr. Cheng's wife
15 indicating that she is trying to return to the United States
16 from Qatar to assist him, but as you can imagine, there's some
17 difficulty with travel at the moment.

18:10:28 18 **THE COURT:** And just so the record is clear, I'm going
19 to mark two exhibits to this hearing. The first is the pretrial
20 report dated 8/24/2020, and then the second is the addendum to
21 the report that was provided by pretrial. I assume that counsel
22 has both the original report and the addendum.

18:10:51 23 **MR. MCINTYRE:** Yes, Your Honor.

18:10:52 24 **THE COURT:** Okay. So that -- I'll make sure that
25 those are included as Exhibit 1 and 2 to this hearing.

18:11:02 1 Okay. We'll have closing arguments -- or closing dog
2 barks from Mr. McIntyre.

18:11:16 3 Don't worry. I totally understand, given that we're
4 doing this by video --

18:11:20 5 **MR. MCINTYRE:** Your Honor -- Your Honor, friends came
6 over, and the dog went crazy. I apologize.

18:11:26 7 **THE COURT:** No worries. No need to apologize. It
8 happens.

18:11:30 9 Are we ready to have a closing argument or anything
10 additionally, Mr. McIntyre, from the government?

18:11:36 11 **MR. MCINTYRE:** I'm ready, Your Honor, whenever the
12 Court's ready.

18:11:39 13 **THE COURT:** I'm ready.

18:11:40 14 **MR. MCINTYRE:** Okay. Your Honor, the defendant in
15 this case is a flight risk. The standard of proof is by a
16 preponderance of the evidence, which we have met. The defendant
17 was born in China. His wife is Chinese, lives in China or
18 Qatar.

18:12:02 19 His son, although not his biological son, has applied
20 for immigration benefits here in the United States and been
21 denied based on the fact that defendant presented a fraudulent
22 birth certificate and misstated the relationship between him and
23 the -- and the son.

18:12:26 24 The defendant has worked in China since at least 2011,
25 all the while working on the NASA grant at Texas A&M, and all

1 the while working at Texas A&M as a professor. So he's had
2 employment at at least two universities in various positions.
3 He participated in Guangdong University of Technology as a
4 Hundred Talents scholar or participant, and -- so he is a member
5 of two Chinese talent programs, which -- which the witness
6 explained to you the beneficial -- the benefits of the talent
7 programs to the country of China. He also applied for a
8 Thousand Talents Program.

18:13:16 9 So in this instance, the defendant, although he
10 arguably currently has a job with Texas A&M, I am sure that will
11 not last long, if it's still existing. So he will be in the
12 United States with no family whatsoever; a son who has been
13 denied immigration benefits and cannot travel to the
14 United States. So no family of any kind, brother, sister, wife,
15 kid. Everybody in his whole life is back in China. He even
16 stated during his post-arrest interview that -- where he would
17 work if he was back in China.

18:13:56 18 So in this case, Your Honor, he has so many ties to
19 China and no ties here to the United States. He is a Chinese
20 government grant recipient. He's been funded -- his research
21 has been funded by the Chinese -- Chinese government, and the
22 United States does not have an extradition treaty with China.
23 So if he were to make it to a consulate or an embassy, he could
24 be sent off to China, and there is no possibility for
25 extradition from China.

18:14:38 1 In addition to that, Your Honor, if you look at the
2 pretrial services report, he claims he makes \$80,000 a year, but
3 he owns seven houses with no corresponding liabilities
4 supporting the pretrial services report. So that's a total of
5 \$1.4 million in real estate with no mortgages, arguably, based
6 on the pretrial services report, for a man who claims to make
7 \$80,000 a year.

18:15:10 8 The math doesn't add up. That cannot be his only
9 employment and be able to afford that much real estate. Even if
10 he was paying no taxes and spending no money, he just couldn't
11 get there.

18:15:24 12 This is a defendant that has not only family,
13 employment history, research history, university history,
14 educational history in China, he spent 31 percent of the time
15 over this time period in China. He simply has every reason not
16 to stay in the United States. He doesn't have employment. He
17 doesn't have family, and he has all of those things back in
18 China.

18:15:51 19 So under the standard of preponderance of the
20 evidence, we think it's very clear, Your Honor, that he is a
21 flight risk, and there's no way to -- or no reasonable way to
22 prevent him or mitigate that risk. And so we would ask,
23 Your Honor, based on the nature of the charges, which involve --
24 we talked about in these relationships with talent programs and
25 other Chinese institutions, and the lack of family here in the

1 United States and the forthcoming lack of employment, that
2 there's every reason for him to flee and no reason for him to
3 stay.

18:16:29 4 So we ask for detention, Your Honor, just pending
5 trial. Thank you.

18:16:34 6 **THE COURT:** Okay. Thank you.

18:16:36 7 Mr. Gallagher?

18:16:37 8 **MR. GALLAGHER:** Your Honor, I want to -- the
9 government has not shown by a preponderance that Dr. Cheng is a
10 risk of flight. I want to start with the -- the inference that
11 the government is drawing regarding his financial status. I
12 think the government's misreading the pretrial report.

18:16:54 13 The information about the assets in the pretrial
14 report, Dr. Cheng could not remember. So the pretrial office
15 got those -- the data regarding the values of the home from the
16 publicly available documents. They don't have, and they
17 didn't -- no one was able to provide, in the short amount of
18 time, information -- oh, no. Hold on a second. Sorry.

18:17:17 19 **THE COURT:** What happened?

18:17:18 20 **MR. GALLAGHER:** Sorry, Your Honor. I'm --
21 everything -- I think my screen has not moved in so long, it
22 went to sleep. I apologize.

18:17:32 23 **THE COURT:** The good news, Mr. Gallagher, is we can
24 hear everything you say.

18:17:34 25 **MR. GALLAGHER:** Okay. Sorry. I was afraid it went to

1 sleep.

18:17:34 2 So pretrial got that information from publicly
3 available data that doesn't list mortgages or anything else on
4 those properties, and as Dr. -- as Dr. Cheng indicated, he just
5 didn't remember the details. So the idea that those are
6 indicative -- I mean, he obviously does have some resources, but
7 the idea that he owned these things all free and clear is not
8 supported by the pretrial report.

18:17:58 9 It also doesn't [sic] show that he does have
10 substantial ties to the community. He's got multiple properties
11 in Texas A&M. There's been no evidence of him having
12 significant or any assets anywhere else outside of the country.
13 That is a significant factor tying him to the community and to
14 the United States.

18:18:16 15 He has -- he also has significant ties here because he
16 has lived here and become a United States citizen since 2004.
17 He has spent time outside the country, but he has spent the
18 majority of the time here. He has a community at Texas A&M.
19 He -- he's invested in the community, and there's been no
20 indication of him trying to jettison any of those ties.

18:18:40 21 While he, apparently, indicated that he would try to
22 seek work in a certain way in China if he needed to, there's no
23 indication that that is anything but a point of desperation
24 should he, in fact, find himself outside the country and without
25 employment at Texas A&M, which is plainly where he wants to

1 continue working. It also hasn't been established that he has,
2 in fact, lost that job. I think it's not clear what Texas A&M's
3 position has been, the evidence as to that.

18:19:13 4 And, finally, there is no evidence of Dr. Cheng having
5 any ability to travel beneath the radar or without authorization
6 from the United States. The United States has his passport. He
7 is a United States citizen.

18:19:28 8 There's -- the government's witness was clear that his
9 only travel has been open and notorious with that passport. The
10 government's evidence of his inception in relation to the grant
11 is not clear. They may prove it at trial, but he's also been --
12 the government -- the witnesses [sic] were clear that he
13 acknowledged his support from different places in multiple
14 publications in research journals. So the idea that this has
15 all been a secret is not -- not clear and something that will
16 have to be developed later.

18:19:57 17 But, in short, he has 16 years in the community in
18 College Station. He has significant assets in College Station.
19 He is, clearly, a talented person who can find work even if
20 Texas A&M is unwilling to employ him in the future, and he --
21 this has been confirmed by another person, a member of the
22 community who knows about his assets and knows him.

18:20:21 23 He does have significant ties here. The government
24 just simply hasn't shown he's a risk to go elsewhere -- oh, I'm
25 sorry. I did want to make one final point.

1 The total amount of this grant, Your Honor, over seven
2 years is less than a million dollars, and the total amount
3 received by Dr. Cheng is less than \$100,000. Now, that's not
4 nothing, but it is also, despite -- the statutory maximum is
5 also not indicative of a guideline sentence that would be
6 exorbitant.

7 It -- obviously, I'm certain no one wants to spend
8 time in custody if he doesn't need to, but it's not like the
9 type of life-ending sentence that can sometimes come in these
10 very big fraud cases. That does not seem like the scope that
11 we're talking about in this case. So that's another reason why
12 he doesn't have the incentive to lose all his assets here in the
13 United States, lose all his bridges with the academic community
14 he's had for 16 years.

15 We'd encourage the Court to impose conditions
16 recommended by pretrial services, Your Honor, and I think those
17 are sufficient and will guarantee his appearance at all future
18 proceedings.

19 **THE COURT:** Okay. Anything further from the
20 government?

21 **MR. MCINTYRE:** Just a brief rebuttal, Your Honor. I
22 mean, the whole case is based on the defendant making false
23 statements, committing fraud and not being honest. And giving
24 someone bond is -- is based on someone that you can trust their
25 word and that you can assure their appearance, and we don't

1 think you can do that based on the record that we've presented
2 of fraudulent statements, fraudulent birth certificates,
3 et cetera.

18:21:58 4 And so we strongly believe, Your Honor, with these
5 ties to these Chinese-controlled universities, talent programs,
6 businesses -- he -- he owns a business in China. His wife and
7 kid are not going to be able to come here. His kid has been
8 denied entry into the United States. There's just simply no
9 reason for -- for him to stay here, and the argument that he has
10 significant assets in College Station because he owns seven
11 homes, well, it's one way or the other.

18:22:29 12 Either he owns the homes and he has substantial equity
13 in them, and he has no explanation as to how he was able to
14 purchase seven homes on an \$80,000-a-year salary, or those are
15 mortgaged to the hilt, and he's got no assets in the
16 United States, which is further motivation for him to go to
17 China where he will be able to meet with his family, obtain
18 employment from Chinese universities and work at his
19 Chinese-owned company.

18:22:55 20 So we strongly believe, Your Honor, that this is a
21 case for detention based on flight risk. Thank you.

18:23:02 22 **THE COURT:** Okay. Anything further, Mr. Gallagher?

18:23:05 23 **MR. GALLAGHER:** I only wanted to say is -- I don't
24 think there's been any evidence that his wife cannot come to the
25 United States. The evidence was that his son may not be able

1 to. His wife, I think, is intending to come, and so the
2 government hasn't presented any evidence on that point.

18:23:17 3 And the other thing I should have mentioned before,
4 which Mr. McIntyre reminded me of, the question asked by
5 pretrial was what was the salary, and Dr. Cheng answered that as
6 \$80,000 a year. There's been no evidence that -- I mean, the
7 government has produced some evidence that he's received income
8 from other research grants in China. There's been no evidence
9 whether he's been receiving other grants within the
10 United States, as researchers often do. Those -- it wouldn't
11 necessarily be relevant in his prosecution because that's based
12 on ties to China, but the idea that someone earning \$80,000 a
13 year as a college professor -- when people routinely take
14 outside work in different ways -- has assets is not suspicious,
15 Your Honor.

18:23:59 16 **THE COURT:** I think both parties would agree that, at
17 least in the record before me, I can't tell what assets or what
18 is -- what assets minus liabilities he has, right? I mean...

18:24:13 19 **MR. GALLAGHER:** That's correct.

18:24:13 20 **THE COURT:** Would you agree with that, Mr. Gallagher?
21 I mean, I know there's a number of properties. I see the
22 numbers in the pretrial report, but at least there's nothing
23 before me that tells me if they're mortgaged or not.

18:24:22 24 **MR. GALLAGHER:** I agree. You don't have that
25 information.

18:24:27 1 **THE COURT:** Okay. Okay. Let me do this: Let me take
2 a minute -- well, let me -- I guess there's two things we were
3 here for, right? We got a probable cause hearing and then a
4 detention hearing. Let me address the probable cause hearing
5 first.

18:24:41 6 Based on the evidence presented here today, I find
7 that the government has met its burden to show that there is
8 probable cause to believe that the defendant has committed the
9 offenses to which he is charged. So as a result, I find that
10 the probable cause standard has been met by the government. Of
11 course, that's not an ultimate finding in the case, as you're
12 all well aware. That just means the case proceeds.

18:25:08 13 I now need to turn to the detention issue. I want to
14 take a couple-minute break to look at a couple of things, and
15 I'm just going to put you-all on mute and cancel the video, and
16 I will be back in a couple of minutes. So we're off the record.

18:25:24 17 **MR. MCINTYRE:** Thank you, Your Honor.

18:25:24 18 **MR. GALLAGHER:** Thank you.

18:25:25 19 *(Recess taken from 6:25 p.m. to 6:30 p.m.)*

18:30:01 20 **THE COURT:** Okay. I'm ready when we have the
21 government back on.

18:30:03 22 Is the court reporter here?

18:30:12 23 **THE REPORTER:** Yes, Your Honor.

18:30:13 24 **THE COURT:** Thank you very much.

18:30:17 25 Okay. We are back on the record. Thank you very much

1 for your patience, your time, the testimony, and your arguments.
2 Obviously, we're here today on the government's request to
3 detain the defendant pending the trial of this matter. So the
4 record is clear in considering this request, I am guided by
5 several general principles.

1 8 : 3 0 : 3 5 6 First, at all times, the defendant is entitled to a
7 presumption of innocence. Nothing that takes place in this
8 hearing is in any way, shape, or form intended or to be
9 construed to affect that presumption of innocence. Rather, the
10 purpose of this hearing is to determine whether the defendant
11 should be detained pending trial.

1 8 : 3 0 : 5 5 12 Second of all, under the Bail Reform Act, pretrial
13 detention is an exceptional step, and I take that very
14 seriously. Under the Act, a defendant must be released prior to
15 trial unless I find that no combination of conditions exist
16 which will reasonably assure the appearance of the defendant or
17 reasonably assure the safety of any other person in the
18 community. And as you-all well know, the Act requires the least
19 restrictive conditions be imposed that are necessary to provide
20 the reasonable assurances.

1 8 : 3 1 : 2 4 21 In this case, the government is, obviously, not
22 seeking detention on the -- concerning the safety of persons in
23 the community, but rather is seeking detention based on the
24 argument that they believe that there is a risk of flight. I
25 have reviewed the evidence. I have listened to the testimony

1 and the arguments of counsel in reaching my decision.

18:31:46 2 Based on that decision, I actually find in this case
3 that I -- remember, the standard is a preponderance of the
4 evidence standard. The government must show by a preponderance
5 of the evidence that no conditions or combination of conditions
6 will reasonably assure the defendant's presence as required in
7 this case.

18:32:06 8 Based on the testimony here today, I find that the
9 government has met that burden. I believe they have shown, by a
10 preponderance of the evidence, that there are no conditions or
11 combinations of conditions that would reasonably assure the
12 defendant's presence as required. I heard the testimony that,
13 obviously, the defendant is employed in China, has business in
14 China, has had a relationship with Chinese universities. I
15 think importantly, in my mind, is the fact that he has no family
16 connection here.

18:32:34 17 There is no indication that there is a reason for him
18 to stay here. It is true that his wife is currently in Qatar
19 and could come back to the United States, but the testimony was,
20 also, that a person that he is raising as his son could not come
21 back to the United States, and, obviously, that is a
22 significant -- fully expect that his wife would stay with the
23 child outside of the United States, which, obviously, would give
24 incentives to the defendant to flee the country.

18:33:03 25 Given the number of times he's been out of the

1 country, the number of days in the last number of years, that
2 also weighs in my decision, as well as the testimony that there
3 is some evidence that, with respect to his son, that he tried to
4 create some fraudulent documents that -- to allow the son here,
5 that is concerning someone that is -- that wants to make sure
6 that the individual who has been charged with a crime actually
7 stands trial before his peers in trial in the case.

18:33:34 8 So based on that, that is my conclusion. I'll,
9 obviously, enter a formal written opinion, but I'm going to ask
10 that the defendant -- or order that the defendant be remanded to
11 custody of the United States Marshal pending the trial of this
12 case.

18:33:50 13 Are there any -- anything else we need to discuss, at
14 least with respect to the detention issue, from the government?

18:33:56 15 **MR. MCINTYRE:** No, Your Honor.

18:33:58 16 **THE COURT:** Mr. Gallagher?

18:34:00 17 **MR. GALLAGHER:** No, Your Honor, nothing.

18:34:01 18 **THE COURT:** Okay. The one other thing I wanted to
19 raise -- and Ms. Ferko actually had raised this yesterday, was
20 the question about the appointment of the federal public
21 defender to represent the defendant in this particular case, and
22 I went back and listened to the hearings from last week, the
23 transcript -- or the recording of the hearing in terms of what
24 went on with Judge Sheldon, and Judge Sheldon was very clear
25 that -- what I heard was that he was going to appoint the

1 federal public defender for the time being because, apparently,
2 there were some assets that Mr. Cheng had or had access to, but
3 he could not get access to those currently, but needed some
4 assistance, I guess, to get in contact with some people outside
5 of -- on the outside to discuss that.

1 8 : 3 4 : 5 9 6 I -- Mr. Gallagher, I know -- you know, obviously, if
7 you would help with your client to reach out to whatever
8 individual that he needs to reach out to, to accommodate that, I
9 am going to have an order that is going to require the defendant
10 to reimburse for the federal public defender's costs in
11 connection with this matter because Judge Sheldon was very
12 clear, when he heard this on Monday, that it was a very unusual
13 situation, that he was very reluctant to appoint the federal
14 public defender, but wanted to do so to ensure that the
15 defendant in this particular case had excellent representation
16 at a detention hearing, which I think Mr. Gallagher has,
17 obviously, provided. So I'll make sure that's put in the order,
18 but I just wanted to point that out for the record.

1 8 : 3 5 : 4 6 19 And, Mr. Cheng, Mr. Gallagher can, obviously, help you
20 reach out to those individuals who you mentioned to Judge
21 Sheldon earlier this week that could assist in obtaining the
22 necessary funds for the retention of counsel.

1 8 : 3 6 : 0 0 23 So that's all I had. Is there anything else we need
24 to address at all today from the government?

1 8 : 3 6 : 0 7 25 **MR. MCINTYRE:** Nothing from the government,

1 Your Honor. Just, I guess, everyone be careful.

18:36:11 2 **THE COURT:** Yeah. Mr. Gallagher?

18:36:14 3 **MR. GALLAGHER:** Your Honor, I just want to make sure
4 I'm clear on the judge's ruling. We're not being terminated
5 from the case, but the Court's going to require Dr. Cheng to
6 reimburse -- well, the clerk's office, I think, at some point;
7 is that correct?

18:36:30 8 **THE COURT:** Yeah. Yes, and I guess let me be more
9 clear. I am going to order that -- the reimbursement to the
10 federal public defender. I would also request that, because
11 Mr. Cheng mentioned at the hearing earlier this week that he has
12 some sources of income or some availability, but he just
13 couldn't access them at the present time being in custody.

18:36:49 14 If you could help facilitate the connection of whoever
15 those sources are, because I'm sure -- and I'll pass on -- I'm
16 not sure, actually, whose court this case is in, but I'll -- you
17 know, I would fully expect and will let that judge know to maybe
18 revisit -- you know, revisit the issue because, obviously, at
19 least in my view, you know, the federal public defender's office
20 does a great service representing those people who cannot afford
21 representation, and if someone can afford representation and,
22 you know, not only can afford, but then has access to such
23 funds, there is no reason for the federal public defender to
24 continue to be involved in the case.

18:37:28 25 But I'll leave that ultimate decision up to whoever

1 the district court judge is that's handling the case, but I just
2 wanted to make sure that, you know, at least the investigation
3 had been done or whatever sources that your client has, the
4 contacts are made to facilitate that possibility. Does that
5 make sense?

18:37:47 6 **MR. GALLAGHER:** Yes, Your Honor. Can I -- sorry to
7 belabor. If you don't mind, I will send, first thing tomorrow,
8 to William -- to Mr. Bostic, the -- to whom any payments should
9 be made. If the Court orders it be made to the federal public
10 defender, that would create confusion.

18:38:04 11 **THE COURT:** Yeah. And let me say this: I know I've
12 issued a couple of orders before. I don't remember to -- the
13 specific language. If you have specific language, then I would
14 greatly appreciate if you would forward that over to Mr. Bostic.

18:38:20 15 **MR. GALLAGHER:** I'll do that.

18:38:20 16 **THE COURT:** Yeah. I would not -- I want to make sure
17 the funds are not directed to Philip Gallagher at the federal
18 public defender.

18:38:27 19 **MR. GALLAGHER:** Thank you.

18:38:28 20 **THE COURT:** Okay.

18:38:29 21 **MS. FERKO:** Thank you, Your Honor.

18:38:30 22 **THE COURT:** Thank you very much.

18:38:30 23 And Mr. Cheng has his hand raised. So, Mr. Cheng, is
24 there something else? I just want to make sure -- obviously,
25 before you say anything, remember, you know, I want -- you and

1 Mr. Gallagher, we talked about communications with the
2 attorney-client privilege. I don't want you to divulge any
3 communications, that should be properly with your counsel, to me
4 or to the government's lawyers.

18:38:54 5 And also, before I even -- before I let you talk,
6 which I definitely will, I know Mr. Gallagher will try to reach
7 out to you to discuss the case and the next steps.
8 Unfortunately, because of the coronavirus pandemic, it isn't as
9 easy as simply, you know, having him, as he often does, go over
10 to -- to the federal detention center. But I'm confident that
11 Mr. Gallagher will get in contact with you as quickly as
12 possible.

18:39:19 13 That being said, was there something else you would
14 like to add without, obviously, violating any confidence in the
15 case?

18:39:37 16 **THE DEFENDANT:** I was just wondering: So they took
17 away some of my credit cards and my clothes. Is it possible
18 that they will return it to me?

18:39:45 19 **THE COURT:** Okay. I'm going to let Mr. Gallagher
20 reach out and discuss those issues with you for a number of
21 reasons. One, that's -- Mr. Gallagher probably knows the
22 answer. He should talk about it, and the honest to goodness
23 truth is I have no earthly idea. So I'll let Mr. Gallagher
24 follow up with you.

18:40:02 25 I hope everyone is safe, sound. It looks like the

1 storm is going to be further east, which is fortunate for us,
2 but, obviously, terrible for those people, as I understand it,
3 in the Beaumont, Lake Charles area. But thank you very much to
4 the interpreter, as well, and the court reporter. I know it's
5 been a long day, and I'm going to go jump over to a Zoom hearing
6 and see who we have -- see what initial appearances --

18:40:23 7 So I apologize -- apologize again for the delay,
8 appreciate your patience, appreciate your professionalism, and
9 have a great day. We're off the record. Thank you very much.

18:40:34 10 **MS. FERKO:** Thank you, Your Honor.

18:40:35 11 **MR. MCINTYRE:** Thank you, Your Honor.

18:40:36 12 **MR. GALLAGHER:** Thank you, Your Honor.

18:40:47 13 *(Proceedings concluded at 6:40 p.m.)*

14 -o0o-

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above matter to the best
17 of my ability and skill, and that any indiscernible designations
18 are because of audio interference that precluded me from
19 understanding the words spoken.

20
21 Date: November 23, 2020

22 /s/ Heather Alcaraz
23 Signature of Court Reporter
24
25

MR. GALLAGHER: [42]

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MS. FERKO: [10]

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